

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESale PRICE)	
LITIGATION)	MDL No. 1456
)	Civil Action No. 01-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	Hon. Patti Saris
)	
<i>United States of America ex rel. Ven-a-Care of</i>)	Magistrate Judge Marianne B. Bowler
<i>the Florida Keys, Inc. v. Abbott Laboratories</i>)	
<i>Inc.</i> , CIVIL ACTION NO. 06-11337-PBS)	
)	

NOTICE OF DECISIONS IN RELATED STATE CASE

The United States submits the following pleading to highlight two highly relevant decisions in a related state action against Abbott. The United States respectfully asks this Court to consider them in connection with government motions pending before the Court.

1. Denial of Abbott's motion to protect witnesses from testifying. Abbott Laboratories Inc. (Abbott) has moved for a protective order in this action to prevent certain witnesses in this matter from testifying, including its current Chief Executive Officer, Miles White, and several retired executives (Duane Burnham, Thomas Hodgson and Richard Gonzalez). *See* Docket ## 4202, 4692, 4774, and 4781. To date, this Court has not yet ruled on those motions.

Abbott sought similar protection in a state action in Pennsylvania generally involving the same issues, *i.e.*, AWP-based drug pricing fraud, and drugs in this case. The state court overseeing the matter rightly denied Abbott's motion for a protective order, paving the way for most, if not all, of these witnesses to finally testify on drug pricing issues. The decision is

attached hereto as Exhibit 1. The United States respectfully requests that the Court expedites its consideration of Abbott's protective order motions regarding Mr. White, Mr. Burnham, Mr. Hodgson and Mr. Gonzalez. The United States believes the ample briefing on the motions is sufficient to decide the matter and that no oral argument is necessary. The United States reiterates that the Court should deny the motions. Expedited consideration by this court will permit the United States to coordinate with counsel from the state of Pennsylvania. Conducting one, consolidated deposition of these witnesses will lessen the burden to them considerably.

2. Order requiring Abbott to de-designate old, non-business sensitive documents previously marked "confidential." In addition, the Pennsylvania state court also issued a decision requiring Abbott and other defendants to de-designate documents marked "confidential" that are older than five years and do not reflect current practices. *See* Exhibit 2. In its Third Motion to Compel, the United States has similarly moved this court to compel Abbott to de-designate the hundreds of thousands of pages of old documents – virtually all are older than five years. *See* Docket # 4799. The documents produced to Pennsylvania should be the same documents produced to the United States (the actions involve similar claims and much, if not all, of the same drugs).

The Pennsylvania court's logic tracks that of this Court: old, non-business sensitive documents should not be afforded protection by the Court. Further, now that Abbott has been ordered to de-designate the improperly designated documents in the Pennsylvania action, there should be a substantial reduction in the burden to Abbott to de-designate the same or similar documents in this action. The United States respectfully submits that there is even less reason

for Abbott to be permitted to retain confidentiality designations on the old documents that constitute the vast majority of the Abbott evidence in this case.

For the United States of America,

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Dated: December 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above **NOTICE OF DECISIONS IN RELATED STATE CASE** to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: December 13, 2007 /s/ Gejaa T. Gobena
Gejaa T. Gobena